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Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSELITO P. PILLOS,

Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION,
and DOES 1 through 20, inclusive,

Defendants.

Case No. **C05 03323**
NOTICE OF REMOVAL OF ACTION

28 U.S.C. § 1441(b) (DIVERSITY)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant Boston Scientific Corporation (hereinafter "Defendant") submits this Notice of Removal and, pursuant to 28 U.S.C. section 1441(b), hereby removes this action. In support of this removal, Defendant states as follows:

1. On June 24, 2005, the Complaint was filed in the Superior Court of the State of California, County of Santa Clara. A true and correct copy of the Complaint served on Defendant is attached hereto as Exhibit A. Service of the Complaint upon Defendant was effectuated on July 18, 2005, the date Defendant was served with a Summons and a copy of the Complaint.

1-PA/3553200.1

1 True and correct copies of the Summons and the Notice of Service of Process are attached hereto
2 as Exhibit B.

3 2. On August 15, 2005, Defendant filed an Answer to the Complaint in the Superior
4 Court of California, County of Santa Clara, a true and correct copy of which is attached hereto as
5 Exhibit C.

6 3. Pursuant to 28 U.S.C. section 1441(b), any civil action over which the district
7 courts of the United States have original jurisdiction may be removed from state to federal court.

8 4. This Court has original jurisdiction under 28 U.S.C. section 1332(a) due to
9 diversity of citizenship and amount in controversy:

10 a. Complete diversity between the parties exists. Plaintiff Joselito P. Pillos, at
11 the time this action commenced, was and still is a resident of San Mateo County, California.
12 (Compl., ¶ 2.)

13 b. Defendant Boston Scientific Corporation, at the time this action
14 commenced, was and still is incorporated in the State of Delaware, with its principal place of
15 business in Natick, Massachusetts.

16 c. The inclusion of "Doe" defendants in Plaintiff's state court Complaint has
17 no effect on removability. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-691 (9th Cir. 1998);
18 28 U.S.C. § 1441 (a) (stating that for purposes of removal, the citizenship of defendants sued
19 under fictitious names shall be disregarded). In determining whether diversity of citizenship
20 exists, only the named defendants are considered. *Id.*

21 d. The amount in controversy exceeds the sum or value of \$75,000, exclusive
22 of interest and costs, in that Plaintiff alleges and seeks to recover several categories of damages
23 including general and special damages, punitive damages, attorney's fees, costs of suit, and other
24 relief the Court deems just and proper. In particular, Plaintiff seeks to recover loss of wages,
25 salary benefits, compensation for future employment opportunities, and compensation for
26 humiliation, mental anguish, emotional and physical distress, and injury to mind and body.
27 (Compl., ¶¶ 14, 15, 22; Prayer for Damages, ¶¶ 1, 2, 5). While Defendant denies Plaintiff's
28 allegations, statistics published by the Bureau of Justice Statistics indicate that median jury

1 awards in civil rights cases (such as Plaintiff's) amounted to \$155,500. (Declaration of
2 Alexander Nestor, attached hereto as Exhibit D, see ¶ 2, Exh. 1 at pg. 2.) These statistics and
3 damages alleged in the Complaint confirm that the amount in controversy exceeds \$75,000,
4 exclusive of interests and costs.

5 5. This Notice of Removal is timely filed, pursuant to 28 U.S. section 1446, in that it
6 is filed within thirty (30) days from July 18, 2005, the date upon which service of the Complaint
7 was effectuated. No previous Notice of Removal has been filed or made with this court for the
8 relief sought herein.

9
10 Dated: August 15, 2005

MORGAN, LEWIS & BOCKIUS LLP

11
12 By 

13 Alexander Nestor
14 Attorneys for Defendant
15 BOSTON SCIENTIFIC CORPORATION
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EXHIBIT A

1 ROBERT G. JACKSON, ESQ. SB#173217
2 HOWARD, LYTTLE, MAH & JACKSON
3 2171 Junipero Serra Blvd., Suite 410
4 Daly City, CA 94014
5 Telephone: 650.992.3200
6 Facsimile: 650.994.8193

7 Attorney for Plaintiff
8 JOSELITO P. PILLOS

ENDORSED

205 JUN 24 P 2 09

Clark Sakai

9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12 UNLIMITED JURISDICTION

13
14 JOSELITO P. PILLOS,

15 Plaintiff,

16 vs.

17 BOSTON SCIENTIFIC CORPORATION,
18 and DOES 1 through 20,
19 inclusive,

20 Defendants.
21

) Case No.:

) COMPLAINT FOR DAMAGES FOR
22) EMPLOYMENT DISCRIMINATION BASED
23) ON AGE AND TORTIOUS DISCHARGE
24) IN VIOLATION OF PUBLIC POLICY

) JURY TRIAL DEMANDED
25)
26)
27)
28)

105CV043845

22 Plaintiff alleges:

23 1. BOSTON SCIENTIFIC CORPORATION ("BSC") is, and at all
24 times mentioned herein was, a corporation organized and existing
25 under the laws of the State of California doing business in
26 Santa Clara County where plaintiff was employed.

27 2. Plaintiff is a resident of San Mateo County.
28 Plaintiff was born on August 10, 1950.

1 3. Plaintiff is ignorant of the true names or capacities
2 of defendants sued herein as DOES 1 through 20, inclusive, and
3 therefore sues these defendants by such fictitious names.
4 Plaintiff will pray leave of this court to amend this complaint
5 to allege the true names and capacities when ascertained.

6 4. Plaintiff is informed and believes, and thereon
7 alleges, that each of the defendants herein was, at all times
8 relevant to this action, the agent, employee, representing
9 partner, or joint venturer of the remaining defendants and was
10 acting within the course and scope of that relationship.
11 Plaintiff is further informed and believes, and thereon alleges,
12 that each of the defendants herein gave consent to, ratified,
13 and authorized the acts alleged herein to each of the remaining
14 defendants.

15 5. On March 7, 2005, plaintiff filed a charge of
16 discrimination based upon his age at the time of termination
17 with the California Department of Fair Employment and Housing
18 (DEFH). The DEFH issued a right to sue letter immediately on
19 March 7, 2005.

20 6. Plaintiff was hired by defendant as an assembler on
21 August 19, 1996. Plaintiff built medical devices including
22 catheters for use in treating heart conditions in patients.
23 These catheters are inserted into the patient's veins and
24 arteries.

25 7. Over a period of several years up to his termination,
26 plaintiff alerted his supervisor Sam Alam ("Alam") as to the
27 defective or dangerous nature of component parts and methods
28 used in the manufacture of these catheters. These reports
included such defects or methods involving the use of defective
rings or handles in the manufacture of the catheters, in
violation of standard procedures and government regulations.

1 8. To these several reports, notices and alerts from
2 plaintiff, Alam responded with orders that plaintiff not
3 instruct or direct him as to his supervision or management of
4 the assembly of catheters.

5 9. Supervisor Alam often spoke to plaintiff as well as to
6 other BSC employees, about improving profits for the company-
7 indicating his intent to do so by removing older employees who
8 were a hindrance to this objective.

9 10. In addition to higher profits, Alam stressed numbers
10 and quantity of production over the quality and the safety of
11 the catheters produced under his supervision. In so doing, Alam
12 often reprimanded and berated plaintiff for taking the necessary
13 time to clean the equipment or the facilities necessary to their
14 assembly.

15 11. About August 5, 2004, plaintiff was terminated from
16 his employment. The reason given to him was that he had
17 threatened a supervisor. Plaintiff was told that there was a
18 witness to his alleged threat. There has never been a specific
19 indication as to what plaintiff was alleged to have said.
20 Plaintiff protested his termination and asked to know the
21 identity of witness. Plaintiff's request was refused and the
22 termination was carried out.

23 **FIRST CAUSE OF ACTION**

24 **Age Discrimination in Violation of the FEHA,**
25 **Government Code Section 12941**

26 12. Plaintiff hereby incorporates by reference Paragraphs
27 1 through 11.

28 13. Supervisor Alam's intention and practice to remove
older employees who are a hindrance to his production quotas
caused plaintiff to be terminated and denied the continued
employment and opportunities that he needed and desired. This
policy or practice had a disparate impact upon plaintiff and

1 other persons of his age, in that it causes persons of
2 plaintiff's age group to be demonstrably disadvantaged relative
3 to younger BSC employees, in the following manner: Alam's
4 enforcement of rigid production quotas, to suit his own goals or
5 objectives, subjected older BSC employees to a disadvantage-both
6 in the added burden of high quota productions and in the
7 favoritism given to younger employees under his supervision.

8 14. Alam and Defendant BSC's discriminatory actions
9 against plaintiff, as alleged above, constituted unlawful
10 discrimination in employment on account of age, in violation of
11 Government Code Sections 12940(a) and 12941. As a proximate
12 result of these discriminatory actions against plaintiff, as
13 alleged above, plaintiff has been harmed in that plaintiff has
14 suffered the loss of the wages, salary, benefits, and additional
15 amounts of money that he would have received if defendant and
16 Alam had not been in the practice of terminating employees of
17 plaintiff's older age group and/or subjecting them to rigid
18 production quotas and standards. As a result of such
19 discrimination and consequent harm, plaintiff has suffered such
20 damages in an amount according to proof.

21 15. As a further proximate result of defendant's
22 discriminatory actions against plaintiff as alleged above,
23 plaintiff has been harmed in that he has suffered humiliation,
24 mental anguish and emotional and physical distress, and has been
25 injured in mind and body, including continuing psychiatric and
26 emotional problems. As a result of such discrimination and
27 consequent harm, plaintiff has suffered such damages in an
28 amount according to proof.

16. The above-recited actions of defendant and Alam were
done with malice, fraud or oppression, and in reckless disregard
of plaintiff's rights under the Fair Employment and Housing Act
(FEHA). Specifically, Alam evidenced repeatedly to plaintiff

1 his disregard for the rights of older employees, as protected
2 under the FEHA, as evidenced in his intent to remove them from
3 employment with BSC, in holding them to rigid production quotas,
4 in stressing quantity over quality and safety in the production
5 of the catheters, and in disregard for their expressed concerns
6 on human health and safety.

7
8 **SECOND CAUSE OF ACTION**

9 **Violation of Public Policy**

10 17. Plaintiff hereby incorporates by reference Paragraphs
11 1 through 16.

12 18. The day preceding his termination, plaintiff had
13 noticed an improper manufacturing process. Plaintiff observed
14 that some of the catheters were made incorrectly. Plaintiff
15 indicated to his supervisor that there was a problem that needed
16 to be rectified. Plaintiff's report of the problem was met with
17 hostility and plaintiff was forced to continue the improper
18 manufacturing of catheters.

19 19. Previously, plaintiff had noticed other problems
20 regarding the assembly of the catheters. Plaintiff's
21 supervisors had consistently rejected his attempts to rectify
22 the problems with the catheters. Further, plaintiff's
23 supervisors emphasized that production quotas had to be met even
24 if the quality of the product was compromised.

25 20. The actions that defendant took in terminating
26 plaintiff violated his rights under the California Fair
27 Employment and Housing Act, Government Code §12940, 12941, and
28 California Labor Code §1102.5 and 6310.

29 21. The knowledge of defendant BSC is based upon the
30 knowledge of supervisor who terminated plaintiff due to their
31 capacity of a managing agent or supervisory employee of
32 defendant BSC.

1 22. As a proximate result of defendant's conduct,
2 plaintiff has suffered harm, including lost earnings and other
3 employment benefits, humiliation, embarrassment, mental anguish,
4 all to his damage in an amount to be established at trial.

5 23. In doing the acts set forth above, defendants knew
6 that the conduct that they would have required plaintiff was
7 unlawful, and required plaintiff to choose between violating the
8 law and losing his job. This oppressive conduct was committed
9 by a supervisor, a managing agent of the defendant. Defendant's
conduct warrants the assessment of punitive damages.

10 24. Defendant BSC authorized or ratified the conduct of
11 Alam by retaining him after hearing of his conduct toward
12 plaintiff and failing and refusing to discipline or reprimand
13 him. The authorization and ratification were by Bennet Javier
14 and Tony Pinon.

15 WHEREFORE plaintiff prays judgment against defendants,
16 and each of them, as follows:

17 1. For damages for breach of contract according to proof,
18 including lost earnings and other employee benefits, past and
future;

19 2. For compensatory damages according to proof, including
20 lost earnings and other employee benefits, costs of seeking
21 other employment, and damages for emotional distress,
22 humiliation, and mental anguish;

23 3. For interest on lost earnings and benefits at the
24 prevailing legal rate from August 6, 2004.

25 4. For punitive damages in an amount appropriate to
26 punish defendant and deter others from engaging in similar
misconduct.

27 5. For reasonable attorney's fees incurred by plaintiff
28 in obtaining the benefits due him under the employment contract
with defendant.

COMPLAINT FOR EMPLOYMENT DISCRIMINATION BASED ON AGE 6

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COMPLAINT FOR EMPLOYMENT DISCRIMINATION BASED ON AGE 7

EXHIBIT B

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Boston Scientific Corporation and
DOES 1 through 20, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTA DEMANDANDO EL DEMANDANTE):
Joselito P. Pillos

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Santa Clara County Superior Court
Civil - Unlimited Jurisdiction
191 N. First Street

San Jose, CA 95113-1090

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ROBERT G. JACKSON
2171 Junipero Serra Blvd., Suite 410
650.992.3200

HOWARD, LYTLE, MAH & JACKSON
Daly City, CA 94014

DATE:

JUN 24 2005

Clerk, by

Clark Sakai

, Deputy

(Fecha)

(Secretario)

KIRI TORRE

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

CHIEF EXECUTIVE OFFICER/CLERK

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify) BOSTON SCIENTIFIC CORPORATION

- under:
- | | |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

- ☐ by personal delivery on (date):

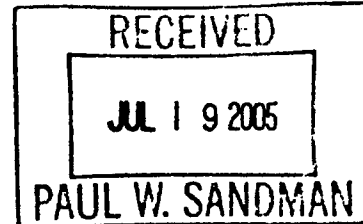


CORPORATION SERVICE COMPANY

Notice of Service of Process

KTR / ALL
Transmittal Number: 4083856
Date Processed: 07/18/2005

Primary Contact: Paul W Sandman
Boston Scientific Corporation
1 Boston Scientific Place
Legal Dept. C15
Natick, MA 017601537



Copy of transmittal only sent to: Ms. Nona Hurd

| | |
|----------------------------------|---|
| Entity: | Boston Scientific Corporation Entity ID Number 1855513 |
| Entity Served: | Boston Scientific Corporation |
| Title of Action: | Joselito P. Pillos vs. Boston Scientific Corporation |
| Document(s) Type: | Summons/Complaint |
| Nature of Action: | Discrimination |
| Court: | Santa Clara County Superior Court , California |
| Case Number: | 105CV043845 |
| Jurisdiction Served: | California |
| Date Served on CSC: | 07/18/2005 |
| Answer or Appearance Due: | 30 Days |
| Originally Served On: | CSC |
| How Served: | Personal Service |
| Plaintiff's Attorney : | Robert G. Jackson 650-992-3200 |

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

EXHIBIT C

AUG-15-2005(MON) 00:15 Legal One
MUG 15 2005 10:18 FR MORGAN LEWIS

(FAX) 1 408 000 0000 P.003/003
650 8434001 TO 15365#0605680011 P.02

ENDORSED
FILED

AUG 15 2005

CHIEF EXEC. OFFICER/CLERK
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
DEPUTY

Sara Batre?

CECILY A. WATERMAN, State Bar No. 63502
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Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JOSELITO P. PILLOS,

Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION,
and DOES 1 through 20, inclusive,

Defendants.

Case No. 1-05-CV-043845

DEFENDANT BOSTON SCIENTIFIC
CORPORATION'S ANSWER TO
PLAINTIFF'S UNVERIFIED COMPLAINT

Complaint filed: June 24, 2005
Trial Date: None Set

BY FAX

Defendant Boston Scientific Corporation (hereinafter "Defendant") hereby answers the unverified Complaint of Plaintiff Joselito P. Pillos ("Plaintiff") as follows: pursuant to California Code of Civil Procedure section 431.30(d), Defendant generally and specifically denies each and every allegation of the Complaint, and each and every cause of action contained therein, and denies that Plaintiff has been damaged in any sum whatsoever or that they have been damaged by any act or omission of Defendant, its agents, representatives, and/or employees. Defendant further alleges the following separate and independent affirmative defenses to each cause of action in Plaintiff's Complaint:

///

1-PA/3553218.1

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Case No. 1-05-CV-043845

DEFENDANT BOSTON SCIENTIFIC'S ANSWER TO UNVERIFIED COMPLAINT

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
SAN FRANCISCO

10716204.M - 8/16/2005 10:10:40 AM

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FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

As a separate and affirmative defense to Plaintiff's Complaint and to each and every cause of action therein, Defendant alleges that the Complaint fails to state facts sufficient to constitute a cause of action against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations: FEHA Claims)

As a separate and affirmative defense to Plaintiff's Complaint and to the first cause of action contained therein, Defendant alleges that Plaintiff's cause of action is barred in whole or in part by the applicable statutes of limitation, including, but not limited to, California Government Code Sections 12960 and 12965.

THIRD AFFIRMATIVE DEFENSE
(Statute of Limitations: Common Law Claims)

As a separate and affirmative defense to Plaintiff's Complaint and to the second purported cause of action contained therein, Defendant alleges that Plaintiff's common law cause of action is barred by the statute of limitations set forth in California Code of Civil Procedure Section 335.1.

FOURTH AFFIRMATIVE DEFENSE
(Unclean Hands)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that each of Plaintiff's causes of action are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE
(Waiver)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that each of Plaintiff's causes of action are barred by the doctrine of waiver.

///

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that each of Plaintiff's causes of action are barred by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Motivating Factor)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that, to the extent discrimination was a motivating factor in Plaintiff's alleged adverse employment actions (which Defendant denies), Defendant's legitimate reasons, standing alone, would have induced Defendant to make the same employment decisions.

EIGHTH AFFIRMATIVE DEFENSE

(Same Action Regardless of Motivation)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that it would have taken the same actions towards Plaintiff in the absence of any alleged impermissible motivating factor (the existence of which such factor Defendant denies).

NINTH AFFIRMATIVE DEFENSE

(Workers' Compensation Preemption)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that, to the extent Plaintiff seeks recovery on account of physical, mental and emotional pain and suffering, then his exclusive remedy for such damages is under California Workers' Compensation Act (California Labor Code sections 3200, *et seq.*)

TENTH AFFIRMATIVE DEFENSE

(Absence of Malice)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause

1 of action contained therein, Defendant alleges that at all times and places alleged in the
 2 Complaint, Defendant acted without malice and with a good faith belief in the propriety of its
 3 conduct.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 (Avoidable Consequences)

6 As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause
 7 of action contained therein, Defendant alleges that it exercised reasonable care to prevent and
 8 correct promptly any discriminatory and/or harassing conduct, Plaintiff unreasonably failed to
 9 take advantage of the preventative and corrective opportunities provided by Defendant or
 10 otherwise to avoid harm, and that reasonable use of Defendant's internal procedures and remedies
 11 would have prevented some, if not all, of Plaintiff's claimed damages from occurring.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 (Failure To Take Advantage Of Preventative Measures)

14 As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause
 15 of action contained therein, Defendant alleges that Plaintiff's causes of action are barred, in whole
 16 or in part, by his unreasonable failure to take advantage of preventative and corrective
 17 opportunities provided by Defendant, including, but not limited to, Defendant's non-
 18 discrimination policies, and to otherwise avoid harm as that expression is used in the United
 19 States Supreme Court decisions in *Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257 (1998)
 20 and *Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998).

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 (Failure to Exhaust Administrative Remedies)

23 As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause
 24 of action contained therein, Defendant alleges that Plaintiff's causes of action are barred because
 25 he has failed to exhaust applicable internal, administrative and/or contractual remedies prior to
 26 commencing this litigation, and/or has otherwise failed to comply with all of the statutory
 27 prerequisites to maintaining this action, including but not limited to, the requirements of
 28 California Government Code Sections 12960 and 12965.

FOURTEENTH AFFIRMATIVE DEFENSE

(Good Faith – Business Necessity)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that all of Defendant's actions affecting the terms and conditions of Plaintiff's employment were done in good faith and motivated by non-retaliatory, and non-discriminatory reasons and/or a business necessity.

FIFTEENTH AFFIRMATIVE DEFENSE

(Management Discretion)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that its conduct was a just and proper exercise of managerial discretion, undertaken for fair and honest reasons, comporting with good faith under the circumstances then existing, and was privileged and justified.

SIXTEENTH AFFIRMATIVE DEFENSE

(Constitutional Limit on Punitive Damages)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that Plaintiff's claims for punitive damages are barred by the Contract Clause (Article I, Section 10, Clause 1), the Due Process Clause (Fifth Amendment, Fourteenth Amendment, Section 1), and the Excessive Fines Clause (Eight Amendment) of the United States Constitution or the corresponding provisions of the California Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Failure to State Claim for Punitive Damages)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that the allegations of each cause of action, whether considered singly or in any combination, fail to state facts sufficient to state a claim for which punitive damages might be granted.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that Plaintiff is barred from any recovery in this action because he has failed to act reasonably to mitigate his alleged damages, if any.

NINETEENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

As a separate and affirmative defense to Plaintiff's Complaint and to each purported cause of action contained therein, Defendant alleges that, to the extent during the course of this litigation Defendant acquires any evidence of wrongdoing by Plaintiff, which wrongdoing would have materially affected the terms and conditions of Plaintiff's employment or would have resulted in Plaintiff either being demoted, disciplined, or terminated, such after acquired evidence shall bar Plaintiff on liability or damages or shall reduce such claims as provided by law.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by virtue of his Complaint in this action and that the Complaint be dismissed with prejudice;
 2. That judgment be entered in favor of Defendant;
 3. For Defendant's costs of suit incurred herein;
 4. For reimbursement of Defendant's reasonable attorneys' fees, as allowable by law;
- and
5. For such other and further relief as this Court may deem just and proper.

Dated: August 15, 2005

MORGAN, LEWIS & BOCKIUS LLP

By


Alexander Nestor
Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is 2 Palo Alto Square, 3000 El Camino Real, Suite 700, Palo Alto, California 94306-2212.

On August 15, 2005, I served the within document(s):

**DEFENDANT BOSTON SCIENTIFIC CORPORATION'S ANSWER TO
PLAINTIFF'S UNVERIFIED COMPLAINT**



by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below.

Robert G. Jackson, Esq.
Howard, Lytle, Mah & Jackson
2171 Junipero Serra Blvd., Suite 410
Daly City, CA 94014
Tel: 650.992.3200
Fax: 650.994.8193

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on August 15, 2005, at Palo Alto, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this court at whose direction the service was made, and that the foregoing is true and correct.



Richard Jackson III

EXHIBIT D

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Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSELITO P. PILLOS,

Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION,
and DOES 1 through 20, inclusive,

Defendants.

Case No. _____

**DECLARATION OF ALEXANDER
NESTOR IN SUPPORT OF DEFENDANT
BOSTON SCIENTIFIC CORPORATION'S
NOTICE OF REMOVAL**

I, Alexander Nestor, declare and state as follows:

1. I am an attorney at the law firm of Morgan, Lewis & Bockius LLP, attorneys of record for Defendant Boston Scientific Corporation ("Defendant"). I am licensed to practice law before all of the Courts for the State of California, and the Northern District of California. I have direct and personal knowledge of the facts set forth in my Declaration and, if called and sworn as a witness, I would competently testify to these facts.

2. I have researched statistical data regarding recent jury awards for civil rights complaints filed in the United States District Courts. Based on my research, the most recent

1-PA/3553202.1

1 publication by the Bureau of Justice Statistics reported that the median award for plaintiffs in civil
2 rights complaints terminated by trial in 2000 was \$155,000, Exhibit 1 hereto at page 2.

3 Executed this 15th day of August 2005, at Palo Alto, California.

4
5 
6 Alexander Nestor

8

EXHIBIT 1

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics

Civil Justice Data Brief

Federal Justice Statistics Program

July 2002, NCJ 193979

Civil Rights Complaints in U.S. District Courts, 2000

In 2000 plaintiffs filed over 259,000 civil complaints in U.S. district courts. About 41,000 of these complaints involved a civil rights-related issue such as discrimination in employment, housing, welfare benefits, or voting rights. The number of civil rights-related cases declined to 40,908 after reaching a high of 43,278 in 1997.

The decline in the number of civil rights complaints was due largely to employment civil rights complaints that dropped 12% from 23,796 in 1997 to 21,032 in 2000. By contrast, the number of other types of civil rights complaints increased from 1998 to 2000: housing from 838 to 1,284, voting from 108 to 167, and welfare from 66 to 80 filings.

In 2000 a jury disposed of 80% of the 1,652 civil rights complaints terminated by trial verdict; a judge, 17%; and a directed verdict, about 4%. This continues the upward trend in the use of jury trials over the decade. On average, civil rights related complaints went from filing to disposition by trial verdict in about 14 months during 2000. Half the complaints were disposed of in 11 months or less.

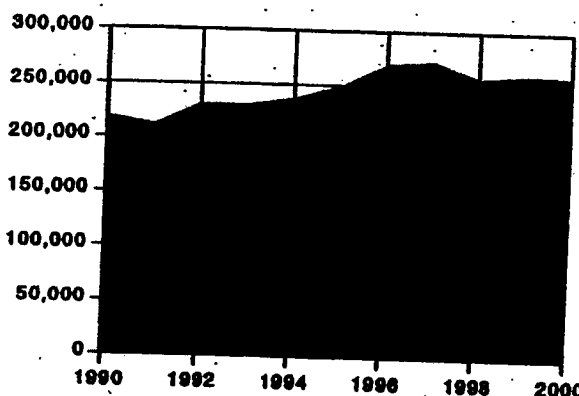
The number of civil rights related complaints filed in U.S. courts of appeal fell to 7,952 in 2000 from a high of 8,466 in 1998. Civil rights related appeals accounted for about 22% of all civil cases filed in U.S. courts of appeal.

Jurisdiction of civil rights complaints

Most (90%) civil rights complaints filed in U.S. district court continued to involve only private parties rather than the Federal Government. Private suits, however, declined 6% from a high of 40,361 in 1997 to 37,888 in 2000, while employment complaints in which the U.S. Government was the defendant rose 8% from 1,241 in 1997 to 1,362 in 2000.

These statistics, prepared by Marika F.X. Litras, Ph.D., update those in previous reports. Visit <http://www.ojp.usdoj.gov/bjs> for the most recent and complete statistics.

Number of civil rights complaints as a portion of all civil cases filed in U.S. district courts, 1990-2000



Types of civil rights complaints filed in U.S. district courts, 1990-2000

| Year | Total | Type of civil rights complaints ^a | | | | |
|------|--------|--|--------|---------|---------|--------------------|
| | | Employment | Voting | Housing | Welfare | Other ^b |
| 1990 | 18,914 | 8,272 | 140 | 367 | 136 | 10,000 |
| 1991 | 19,892 | 8,370 | 247 | 452 | 130 | 10,893 |
| 1992 | 24,233 | 10,771 | 494 | 527 | 125 | 12,316 |
| 1993 | 27,655 | 12,962 | 213 | 590 | 114 | 13,776 |
| 1994 | 32,622 | 15,965 | 224 | 730 | 122 | 15,681 |
| 1995 | 36,600 | 19,059 | 208 | 735 | 116 | 16,482 |
| 1996 | 42,007 | 23,152 | 229 | 932 | 83 | 17,611 |
| 1997 | 43,278 | 23,796 | 141 | 854 | 91 | 18,396 |
| 1998 | 42,354 | 23,735 | 108 | 838 | 66 | 17,510 |
| 1999 | 41,304 | 22,490 | 102 | 1,136 | 63 | 17,513 |
| 2000 | 40,908 | 21,032 | 167 | 1,284 | 80 | 18,345 |

^aExcludes prisoner petitions.

^bSpecific types of civil rights cases within the "other" category cannot be distinguished.

Source: Annual Report of the Director. Washington, D.C.: Administrative Office of the United States Courts (table C-2).

Plaintiff winners and awards in civil rights complaints terminated by trial in U.S. district courts, 1990-2000

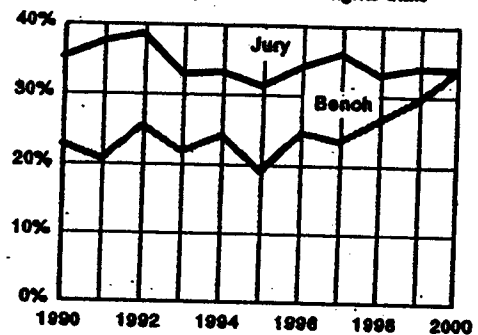
| Year | Number of cases terminated by trial verdict | Total number | Percent awards | Plaintiff winners | | | |
|------|---|--------------|----------------|-----------------------------|--------------|---------------------|---------------------|
| | | | | Number with monetary awards | Award amount | | |
| | | | | | Median | Less than \$500,000 | \$1 million or more |
| 1990 | 1,884 | 384 | 27.7% | 317 | \$184,000 | 58.9% | 38.4% |
| 1991 | 1,351 | 380 | 28.1 | 323 | 173,000 | 61.8 | 38.2 |
| 1992 | 1,838 | 568 | 30.9 | 451 | 100,000 | 67.3 | 27.4 |
| 1993 | 1,549 | 418 | 27.0 | 349 | 82,000 | 81.1 | 14.0 |
| 1994 | 1,793 | 513 | 28.6 | 424 | 75,000 | 84.7 | 9.9 |
| 1995 | 1,799 | 470 | 26.1 | 363 | 100,000 | 80.7 | 13.3 |
| 1996 | 1,979 | 602 | 30.4 | 488 | 100,000 | 77.9 | 15.5 |
| 1997 | 1,874 | 624 | 31.6 | 495 | 110,000 | 77.8 | 15.6 |
| 1998 | 1,954 | 585 | 29.9 | 447 | 125,000 | 78.3 | 14.3 |
| 1999 | 1,801 | 574 | 31.9 | 464 | 130,000 | 80.4 | 14.2 |
| 2000 | 1,652 | 545 | 33.0 | 416 | 155,500 | 77.9 | 13.7 |

*Number of trial cases disposed for which a judgment was known. Includes jury trials, bench trials, and directed verdicts.

Source: Administrative Office of the U.S. Courts, Civil Master File, annual.

In 2000 the percentage of plaintiff winners from jury and bench trials converged at 34%: the percentage of plaintiff winners in bench trials rose from a low of 19% in 1995 and the percentage in jury trials fell from a high of 39% in 1992

Plaintiff winners as percent of civil rights trials



Continued increase in out-of-court settlements

While out-of-court settlements rose from 35% of civil rights complaints disposed of in 1998 to 38% in 2000, trial verdicts continued a decline from 5% to 4%.

Plaintiff winners and awards

Plaintiffs won 34% of civil rights complaints in 2000 regardless of the type of trial. Of the 545 plaintiffs who won their trials, 416 or 76% were awarded monetary damages. Half of these awards were in amounts of \$155,500 or less.